United Nations CAT/C/PRT/CO/5-6/Add.2

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
19 February 2015

English only

Committee against Torture

Concluding observations on the fifth and sixth periodic reports of Portugal

Addendum

Information received from Portugal on follow-up to the concluding observations*

[Date received: 4 December 2014]

1. Fundamental safeguards (para. 8)

(b) Ensure that suspects are informed of and are able to exercise their rights at the very moment of their deprivation of liberty, and are informed of the reasons for their detention

1. In situations of detention in the scope of a criminal investigation, the detainees are informed of their rights, guarantees and the legal grounds for the arrest. The Portuguese Code of Criminal Procedure (CCP) provides that anyone who is subject to detention is informed of their rights and the reasons for their detention. Furthermore, the Portuguese security forces have written information leaflets in different languages to guarantee that foreign citizens who are detained understand their rights.

2. People are formally notified of their procedural rights and duties as well as of the accusations that support the measure that is applied to them. These are the superior guidelines given that result from the law.

3. Within the facilities of the Criminal Police, detainees are entitled to be informed of the rules concerning guarantees in criminal procedure, both those of the Constitution and of the CCP.

4. This practice of respect for the fundamental guarantees of the detainees is taught in the Criminal Police Training School in ethics, professional conduct and citizens' freedoms and guarantees, in collaboration with the Disciplinary and Inspection Unit, and is one of the core principles of Judicial Police action under the rule of law.

* The present document is being issued without formal editing.

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(c) Guarantee access to an ex officio lawyer, including consultations in private, as from the moment of deprivation of liberty and during interviews with law enforcement officials

5. Access to a lawyer is a right provided by law and the Portuguese security forces must respect this right. Within the facilities of the Criminal Police, detainees are entitled to confidential contact with their lawyer.

6. Portuguese prisons respect the right of the prisoners to correspond freely with lawyers, notaries, solicitors, diplomatic and consular bodies, and sovereign bodies, Ombudsman, Inspectorate General of Justice Services of the Ministry of Justice (IGSJ) and President of the Bar, without any control of the communications' content. Thus, prison services effectively fulfill their legal obligation to ensure the freedom of communication between detainees/prisoners and the entities entrusted with the protection of the rights of prisoners.

2. Prompt, effective and impartial investigations (para. 9)

(a) Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially by appropriate independent bodies at the criminal level, irrespective of disciplinary investigations

7. In Portugal, the elements of the security forces that are the object of a complaint due to acts of torture or ill-treatment are subjected to three simultaneous and independent investigations: one by the Public Ministry (Ministry of Justice); another by the Inspectorate General of Internal Affairs (coordinated by the Ministry of Internal Affairs); and also an internal investigation by the Public Security Police (PSP) and the National Republican Guard (GNR), which, when appropriate, takes preventive measures. The Foreigners and Borders Service (SEF) has an internal control through the Department of Inspection, a control applied by the Inspectorate General of Internal Affairs, as well as an external control (Judicial) through the Prosecutor.

8. The Office of Audit and Inspection (SAI) of the Directorate-General of Rehabilitation and Prison Service (DGRSP), which is coordinated by a Public Prosecutor, exercises its responsibilities ex officio, but also based on prisoners'/prisoners' families' complaints or from news media. These complaints/news are properly investigated, as an inquiry is always opened to assess whether the allegations of mistreatment are true.

9. The activity of the DGRSP is under constant scrutiny, since the prisons may at any time be visited by holders of sovereign bodies (including judges), as well as representatives of international organizations with responsibilities in matters relating to the promotion and protection of the rights of prisoners, as stipulated by the Code for the Enforcement of Sentences (Law 115/2009 of 12 October).

10. The alleged situations of torture and ill-treatment in prison settings are properly investigated by the competent authorities: the Audit and Inspection Service (IAS) of the DGRSP and the Inspectorate General of Justice Services. Thus, the situations that came to the knowledge of these entities have been properly investigated, and one case is still pending in court.

11. Furthermore, prisoners are, like other citizens, registered as users of the National Health Service. Hence, prison services seek to ensure medical care to all who are in custody or serving a sentence, including the access of prisoners to private clinics and hospitals of the National Health Service, when necessary. If, under medical care, evidence of mistreatment or torture is detected, the clinical staff shall immediately communicate the

case, in writing, to the prison warden, which triggers the necessary procedures to investigate any situations of mistreatment.

12. As to the detention facilities of the Judicial Police, torture and mistreatment of prisoners/detainees is a crime provided for and punished by article 243 of the Criminal Code, as well as a breach of professional duties by Judicial Police agents. As regards the criminal part, the Public Prosecutor's Office opens the investigation and determines whether or not there is evidence of the crime of torture committed by agents in charge of the criminal investigation. Concerning disciplinary offences, the internal services of the Judicial Police (Disciplinary and Inspection Unit – UDI) investigate the possible commission of disciplinary offences.

13. The Inspectorate General of Justice Services of the Ministry of Justice (IGSJ) is the service responsible for the investigation of the complaints that any citizen may submit concerning institutions under the Ministry of Justice. Since its jurisdiction also covers the operation of the prison services, it investigates any complaints, claims and accusations concerning the prison system and the situation of detainees as regards allegations of abuse, violence and mistreatment.

14. This service is provided to all citizens who want to present a complaint, without any formality, anonymously or with identification, in person or by mail, electronic mail, or by completing an online form, as well as by phone. The electronic form allows the complaint to be submitted directly to the internal automatic registration system, allowing the streamlining of procedures and, consequently, an acceleration in the handling of such cases.

15. The IGSJ has made the complaint form available to all the services of the Ministry of Justice (it is available at the web site of 14 services since 2011), and ensures that all complaints, claims and allegations submitted in the context of its activities are directed and investigated, as well as that all identified complainants are informed of the status of the case and of the respective final conclusion.

16. On the request for additional information, the information collected in 2013, which we enclose, is updated as follows:

Nature of the Complaints		*2011*	*2012*	*2013*
Violence/Abuses		Total: 200	Total: 277	Total: 297
Abusive behavior from the Prison workers	Daily Routine	30	21	15
Illegitimate Action from the Direction of the Prison	Daily Routine	34	16	6
Irregular Action of the Prison	Daily Routine	17	20	41
Poor conditions of the Prison		5	10	9
Disciplinary Sanctions/punishments		0	2	9
Physical Aggressions/mistreatment		2	1	29
Verbal Aggressions/threats		2	0	0
Violence between prisoners		2	9	3
Medical Assistance		11	17	18
Death of Prisoners		3	19	17
Suicide Attempts		0	1	3
Discriminations		0	0	0
Food		4	9	6
Visits		3	17	5

Nature of the Complaints	*2011*	*2012*	*2013*
Other	7	21	24
Total	**120**	**157**	**185**

(b) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that their victims are afforded appropriate redress

17. Depending on the circumstances presented and provided that there is a criminal or disciplinary matter, IGSJ refers complaints of this nature to the Public Prosecutor's Office, or to the Audit and Inspection Services of the DGRSP or of the Criminal Police in order to assess the facts. The results are reported to the IGSJ so it may follow up a case itself.

18. The recommendations made in the complaints procedures instructed by IGSJ aiming to rectify situations, restoring legality or improving conditions and procedures, may result in the opening of an inquiry by the Public Prosecutor's Office, the opening of an investigation or disciplinary process and/or by the audit and inspection services of the DGRSP and the Criminal Police, recommendations/alteration of procedures in the targeted prison, postponement of the disciplinary penalty, clarifying the situation, unproven accusation or dismissal of the case for lack of evidence.

19. From the 29 cases referred in 2013 by the IGSJ, 15 originated in investigations by the Internal Audit Service of the DGRSP and 4 in disciplinary processes. Of these 19 cases (4 were reported to the Public Prosecution), 11 were closed because it was not possible to prove the complaints that were made, except one, whose situation was corrected accordingly, 3 were closed for lack of response from the interested person and 6 were concluded due to lack of evidence or due to unproven accusation.

20. Concerning the Judicial Police, IGSJ did not receive any complaints in 2013. Regarding complaints within the prison services, the filing occurs when evidence found is not enough to charge anyone for criminal/disciplinary offences.

21. The number of convictions for acts of this nature committed by professionals of the PSP has been residual and shows a tendency to decrease.

3. Domestic violence (para. 17)

(a) Ensuring the effective implementation of the legal framework and the Fourth National Action Plan against Domestic Violence, including by promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible

22. Law enforcement authorities have been creating special teams to investigate crimes of domestic violence, and public prosecution is developing integrated responses to accelerate the investigation of crimes of domestic violence and adequately protect victims, including women, children and the elderly.

23. Guidelines and technical assistance are being provided to help courts assess the risk of re-occurrence of domestic violence, and other national and international projects related to this issue are taking place: the reformulation and improvement of victim-identification and risk assessment forms; the participation in several national and international working groups; the dissemination of information; and the development of training materials for relevant professional groups.

24. Protocols between relevant public and private actors have been signed in order to facilitate reporting, victim identification and risk assessment. Also, there were important developments regarding forensic medicine, such as training courses for medical experts dealing with domestic violence cases, scientific meetings and protocols to coordinate interventions in this area.

25. In November of 2014, the Security Forces will adopt a new model of Risk Assessment which will allow better coordination with the prosecutor and as an immediate result, a more effective exchange of information.

26. A number of provisions have been introduced to regulate aspects covered by the Law on the prevention of domestic violence adopted in September 2009, which established important measures such as:

(a) The urgent nature of domestic violence proceedings (a Constitutional Court decision of 2012 has underlined the urgent nature of these cases, even without pre-trial detainees);

(b) The use of remote surveillance means to control perpetrators (mandatory since February 2013) and assist victims (with free-of-charge and easy to use devices that allow a direct connection to the police 24-hours a day);

(c) The possibility to arrest perpetrators even if not caught in the act.

27. The Fourth National Action Plan against Domestic Violence (NAPADV), which was subject to an independent evaluation, was concluded and the majority of its measures were implemented (almost 100%).

28. As the main results achieved with the implementation of this Plan, according to the evaluation report, Portugal highlights:

(a) The scope of the plan, in terms of strategic areas of intervention, reinforced and potentiated an integrated and holistic vision of domestic violence;

(b) Flexibility/ability to go beyond what was included in the plan, particularly with regard to the involvement of other organizations;

(c) The inclusion, during the implementation of the plan, of different ministries, and other entities of both central and local public administration, as well as of civil society;

(d) Accountability of various public entities regarding the implementation of measures;

(e) Support, at governmental level, for the plan and its implementation;

(f) The coordination with the execution of the IVth National Plan for Equality, Gender, Citizenship and Non-Discrimination;

(g) The coordinated intervention of the various authorities and bodies involved in the implementation of the specific measures and in the plan as a whole;

(h) The establishment of working teams in some of the ministries involved to implement the IVth NAPADV (in some cases, in coordination with other national plans);

(i) Coordination within the Ministries, in particular between internal work teams;

(j) The working of the support group: regular meetings under the direct coordination of the Secretary of State for Parliamentary Affairs and Equality;

(k) The methodology of planning and monitoring adopted: annual reports on the implementation of measures;

(l) The increased investment in training and qualification of professionals, with diverse profiles, involved in the field of domestic violence;

(m) The focus on prevention (e.g. awareness-raising initiatives aimed at youth and interventions in schools);

(n) The focus on the development of strategies and resources for the protection of victims (e.g., electronic surveillance, tele-assistance, transportation of the victims, shelters, response to emergency situations);

(o) The focus on awareness and involvement of the judicial system;

(p) The focus on developing strategies and re-insertion capabilities/social integration of victims (e.g., financial support for the empowerment of victims in foster homes, easier access to housing);

(q) The focus on vulnerable victims (for example, on the basis of age or disability);

(r) The focus on working with aggressors;

(s) The focus on researching the phenomenon;

(t) Promoting the involvement of municipalities on prevention and combating domestic violence, streamlining the role of local and regional networks;

(u) Contribution to a greater social awareness about the problem of domestic violence;

(v) Contribution to the promotion of a culture of citizenship, gender equality and non-violence.

29. The Fifth National Action Plan to Prevent and Combat Domestic and Gender-based Violence (2014–2017), approved in December 2013, also establishes other preventive measures, such as:

(a) Intensifying the role of municipalities in preventing domestic and gender-based violence;

(b) Promotion of equality in order to eliminate gender stereotypes and empower women and girls. These measures are specifically directed to the education community, and address, especially, the issues of bullying, violence through the new information and communication technologies and teen dating violence;

(c) Strengthening programs to prevent re-offending through intervention with offenders, particularly by a program for offenders of domestic violence that aims to promote domestic violence awareness and taking responsibility for violent conduct, as well as the use of alternative strategies to reduce re-offending;

(d) To raise awareness about genders and domestic violence within immigrant and Roma communities (measure coordinated with 12th priority of the National Roma Communities Integration Strategy 2013–2020 which, among other actions, provides for training actions to municipal Roma mediators about domestic violence).

30. The Plan in English can be found at the following link: http://www.cig.gov.pt/wp-content/uploads/2014/06/CIG-VPNPCVDG_2014-2017_ENG.pdf

(b) Continuing to conduct public awareness-raising campaigns to fight domestic violence and gender stereotypes, particularly among young people, and increasing training for law enforcement officers, judges, lawyers and social workers

31. Portugal has made significant efforts to prevent violence against women through the implementation of several measures, many of them established by National Plans against Domestic and Gender-based Violence, such as:

(a) Annual information campaigns for specific target groups, to conduct information and awareness-raising programs on domestic and gender-based violence (since 2005). Through video-clips, radio spots, press, posters and internet, campaigns are essential tools to raise awareness and promote social change. In 2013 the Portuguese Government and the Executive Secretary of CPLP launched a joint campaign in the International Day for the Elimination of Violence against Women to be replicated in all Member States, under the motto "against violence I show my face". (The survey on Violence against Women carried out by the Fundamental Rights Agency found that, in Portugal, 70 % of the women asked answered that they had recently seen or heard awareness-raising campaigns, the European Union average being 50%).

(b) Development and dissemination of informative and educational materials addressed to the educating community;

(c) Training of professionals involved in the area of domestic violence, in particular judges, security forces and health professionals;

(d) Extension of the tele-assistance system, by increasing the available electronic surveillance devices and dissemination of information about this system of protection in training actions addressed to judges and prosecutors.

32. Concerning the law enforcement officers, the PSP officers receive intensive training regarding Domestic Violence. In 2012 more than 1.000 police officers were present in 40 training courses, and in 2013, 4.600 police officers were involved in 300 training courses. In 2014 the same results are expected.

33. As regards GNR, another important actor against domestic violence it is especially relevant to mention, among others, the IAVE Project (Investigation and Support Specific Victims) because of its national and international dimensions (it is a candidate for a European prize for good practice), as well as the model of risk analysis of domestic violence, which was internationally presented in partnership with other entities, cooperation with public and private institutions, and sensitization and training actions (such as that given from 15 to 19 September 2014 to a Turkish delegation).

(c) Undertaking research into the impact of preventive measures and criminal justice responses to counter domestic violence, with a view to increasing their efficiency

34. The Vth National Plan Against Domestic and Gender-based Violence previews specific studies in the field of domestic and gender-based violence, in close cooperation with universities and research centers.

(d) Compiling and providing the Committee with disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts

Specific rehabilitation programmes	*2011*	*2012*	*2013*
Recidivism prevention programmes on Domestic Violence (application in a communitarian context)	187	427	695
Programme for Sexual Offenders (application in a prison context)	75	81	113

Trend of requests related to the support of enforcement of sentences and alternative measures to imprisonment and their execution in the community - crimes of domestic violence – as of 31 December

In the criminal area

year	*Pre-sentence phase*						*Post-sentence phase*												Penalties and measures applied with electronic surveillance, a)			Total by gender		
	Coercion measures - art. 200 CPP, art. 55 DL 15/93			Provisional suspension of the procedure – art. 281 CPP, art. 56 DL 15/93			Community work – (PTFC+SMT), art. 58 CP, art. 490 and 496 CPP			Suspension of the enforcement of the imprisonment sentence – art. 50 to 54 CP, art. 44 and 45 DL 15/93			Conditional release - art. 64 CP			Measures applied to non-indictable individuals, detained or at liberty – art. 91, 94, 98 CP Art.202 CP								
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total
2011	128	0	128	1.884	85	1.969	55	2	57	920	22	942	30	0	30	10	0	20	139	1	140	3.166	110	3.276
2012	199	2	201	2.967	142	3.109	101	4	105	1.086	27	1.113	38	0	38	17	2	19	265	3	268	4.673	180	4.853
2013	233	2	235	3.371	169	3.540	125	4	129	1.131	29	1.160	42	0	42	19	3	22	345	4	349	5.266	211	5.477

In the educational tutorial area

year	*Pre-sentence phase*			*Post-sentence phase*									Youngsters detained in educational centres – art 145 LTE, b)			Total by Gender								
	Suspension of the procedure with or without mediation – art 84 LTE			Community work – art. 12 LTE			Imposition of obligations – art 14 LTE			Educational Follow-up art 16 LTE														
	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total	M	F	Total						
2011	0	0	0	1	1	2	3	0	3	3	0	3	6	0	6	13	1	14						
2012	0	0	0	1	2	3	4	0	4	3	0	3	7	1	8	15	3	18						
2013	2	0	2	2	2	4	5	0	5	5	0	5	7	3	10	21	5	26						

These data refer to persons indicted for crimes of domestic violence, with penalties and measures applied as of 31 December 2011, 2012 and 2013

a) The penalties and measures applied with electronic surveillance include the OPHVE coercion measures (art. 201, n. 1/3 CPP), in-house imprisonment (art. 44, n. 1/2 CP), adaptation to conditional release (art. 62 CP), modification of the imprisonment sentence (art. 120, n. 1/2 of the Law 115/2009) and measures related to crimes of domestic violence applied in the scope of the prohibition of contacts with the victim in the two phases of the criminal procedure (art. 31 and 35 of the Law 112/2009)

b) The measures related to detained youngsters include, in the pre-sentence phase, the protective guardianship measure, confinement to carry out expert examinations on personality and detention and, in the post-sentence phase, detention in an Educational Centre and week-end detention

Treatment of Roma and other minorities (para. 18)

35. Roma communities have had Portuguese citizenship for centuries (it is estimated that Roma communities in Portugal comprise between 40,000 to 50,000 individuals). They are covered by the measures accessible to the general population and have access to a wide range of general programmes and measures aimed at individuals and groups living in situations of poverty and exclusion. Among those measures are the Social Integration Income and other measures for social protection, housing programmes and Child Welfare school services.

36. The Portuguese Government launched the National Roma Communities Integration Strategy 2013–2020 in 2013.[1] This is an important instrument, which will help Portugal to better integrate Roma Communities and to eliminate prejudices and misconceptions. The main areas of the Strategy are: education, health, housing and employment. The Strategy addresses the recommendations of the European Commission and also includes the fight against discrimination, gender perspective, mediation, Roma history and culture, and justice and security as crosscutting areas.

37. This strategy involves central administration, municipalities and social partners such as social solidarity institutions. An Advisory Group for the integration of Roma Communities was created to monitor the Strategy's implementation and to ensure permanent contact with the Roma community and civil society organization representatives.

Thematic Pillars of the Strategy

(i) Crosscutting Pillar:

- Dimension I – Knowledge of socioeconomic context of Roma communities and follow-up mechanism of National Strategy;
- Dimension II – Discrimination;
- Dimension III – Education for Citizenship;
- Dimension IV – Roma history and culture;
- Dimension V – Gender Equality;
- Dimension VI – Justice and Security;
- Dimension VII – Mediation;
- Dimension VIII – Social Security;

(ii) Education Pillar;

(iii) Housing Pillar;

(iv) Employment and Training Pillar;

(v) Healthcare Pillar.

38. Dimension VI (justice and security) provides for two measures that underline the concern of discrimination and inequality of treatment towards Roma communities, involving justice professionals and police in information and awareness-raising actions. The strategy also provides for the development of several training sessions about the history and culture of Roma communities in Portugal, targeting law enforcement authorities. In this

[1] Available in English from www.acidi.gov.pt/_cfn/532c521f57fd6/live/Estrat%C3%A9gia+Nacional+para+a+Integra%C3%A7%C3%A3o+das+Comunidades+Ciganas+-+Ingl%C3%AAs.

context, in 2014 several practical manuals were published to prevent discrimination against Roma communities, namely targeting the police and justice professionals (under the European project Net-Kard and available from www.acidi.gov.pt/cicdr/outros-documentos/guias).

39. As regards the Portuguese police officers, the PSP and the GNR implement all the recommendations put forward by the Committee in what concerns the above-mentioned paragraph.

40. The PSP has been promoting several initiatives in this domain and collaborating with the High Commission for Immigration for Migrations (ACM, IP) and the Directorate General of Internal Affairs (DGAI) in order to better know and understand the reality of different minority groups in the country and, thereby, improve law enforcement responses. It has also established several partnerships with multiple entities, seeking, through social networking and institutional interaction, to achieve greater integration and acceptance of these groups and a closer relation between the police officers and the persons of these communities.

41. GNR participates in the National Roma Communities Integration Strategy, in particular for the promotion of the integration of security forces in local partnerships and the dissemination of the national strategy to all its territorial units.

42. Regarding discrimination against Roma, the Commission for Equality and against Discrimination (CICDR) has been promoting the prevention and the combat of racial discrimination targeting these communities in Portugal.[2] This has been done through legal analyses and administrative procedures of discrimination complaints, official statements and mediation actions with inspections and different entities (including municipalities). The Commission's main work concerns possible offences under the provisions of the administrative law. Any discriminatory acts committed by individuals or by public or private-law entities constitute administrative offences punishable by a fine, irrespective of the issues of civil liability or of any other penalty which may be applied. Among the 412 racial discrimination complaints received by this Commission between 2009 and 2014, 47 were issued for alleged acts of discrimination against members of the Roma communities. These 47 complaints generated 26 administrative offences (PCOs), in which 9 were of alleged discrimination actions by security forces. However, it should be considered that the evolution in the number of complaints for racial discrimination acts over the years is a reflection of the increasing efficiency of the means of action and of the dissemination of information concerning the rights protected in Portugal.

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[2] http://www.acidi.gov.pt/cicdr/discriminacao-racial